



REVISED SCOPE AND JURISDICTION

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106.6(b) – Effect of State or Local Law



“The obligation to comply with Title IX and this part is not obviated or alleviated by any State or local law or other requirement that conflicts with Title IX or this part.”

Noted Changes:

- “Conflicts with local law” replaces prior language which referenced limiting ability to “practice any occupation or profession” and specific sections of the regulations

Comments:

- Lawsuits filed by multiple states challenging the new regulations on basis that they conflict with state law limiting transgender (gender identity or sexual orientation) rights



POLICY POINT

This is an open item in light of the current litigation and conflict in laws. Continue to stay up to date with your local and state laws and Title IX litigation.

106.6(g) - Exercise of Rights by Parents



Nothing in Title IX or this part may be read in derogation of any legal right of a parent, guardian, or **other authorized legal representative** to act on behalf of a complainant, respondent, or other person, subject to paragraph (e) of this section, including but not limited to making a complaint through the recipient's grievance procedures for complaints of sex discrimination.

Noted Changes:

- Added “or other authorized legal representative”

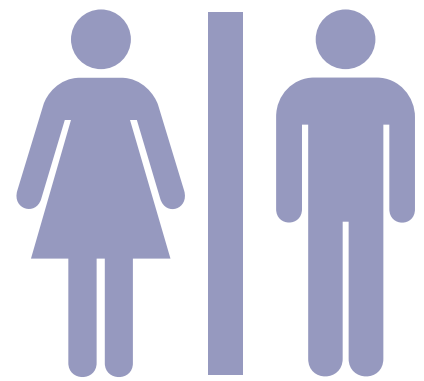
Comments:

- Guardians & other authorized legal representatives included in this preservation of rights

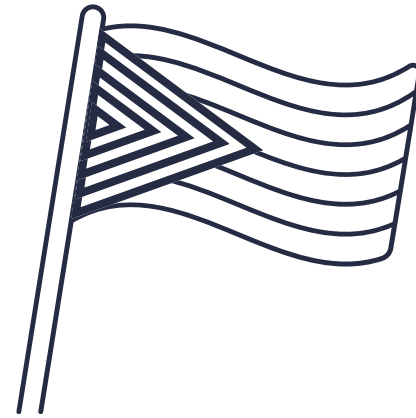
106.10 – SCOPE



DISCRIMINATION ON THE BASIS OF:



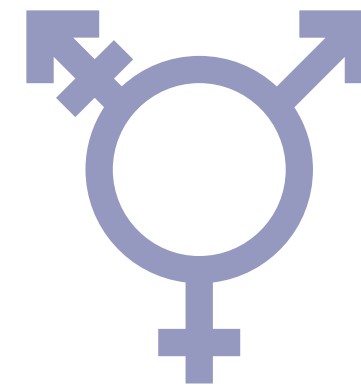
Sex
Stereotypes



Sexual
Orientation



Pregnancy or
related conditions



Gender
Identity



Sex
Characteristics



POLICY POINT

This is a new provision in the regulations and is very explicit. Policy will need to encompass the full scope of sex discrimination.

106.11 – APPLICATION



“This part applies to every recipient and to all sex discrimination occurring under a recipient’s education program or activity in the United States. For purposes of this section, conduct that occurs under a **recipient’s education program or activity includes but is not limited to conduct that occurs in a building owned or controlled by a student organization that is officially recognized by a postsecondary institution, and conduct that is subject to the recipient’s disciplinary authority.** A recipient has an obligation to address a sex-based hostile environment under its education program or activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the recipient’s education program or activity or outside the United States.”

Noted Changes

- Prior 106.11 only referenced “recipient and to the education program or activity operated by such recipient” and “building owned or controlled by a student organization officially recognized by a postsecondary institution”



1. Expansive scope of **conduct that is subject to the recipient's disciplinary authority** now within the scope of Title IX requirements regarding sex discrimination.
2. Obligation to address sex-based hostile environment even if some conduct contributing to the hostile environment occurred **outside of the recipient's education program or activity or outside the United States.**



1. Expansive scope of **conduct that is subject to the recipient's disciplinary authority** now within the scope of Title IX requirements regarding sex discrimination.
2. Obligation to address sex-based hostile environment even if some conduct contributing to the hostile environment occurred **outside of the recipient's education program or activity or outside the United States.**



POLICY POINTS

- Consider how to address incidents occurring outside of United States which may not be subject to Title IX at time of occurrence but ultimately become a factor in a subsequent hostile environment matter
- Coordination with study abroad office
- Review student conduct policy and school's "disciplinary authority"

106.31 – EDUCATION PROGRAM



“In the limited circumstances in which Title IX or this part permits different treatment or separation on the basis of sex, a recipient must not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm.”

Noted Changes

- 106.31(a)(2) was added addressing gender identity

Comments

- There is pending litigation regarding gender identity protection that may impact this part of the regulations.